

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LUIS TORO, on behalf of himself and all  
others similarly situated,

Plaintiffs,

-v-

CONCOURSE TEAM EXPRESS, LLC,  
Defendant.

23-CV-6595 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On July 28, 2023, Plaintiff Luis Toro, on behalf of himself and all others similarly situated, sued Defendant Concourse Team Express, LLC, seeking injunctive relief, declaratory relief, and damages under the Americans with Disabilities Act and state laws. (ECF No. 1.) Toro served Concourse on August 16, 2023. (ECF No. 5.) On October 2, 2023, the Court directed Plaintiff to file a status letter or move for default judgment against Concourse on or before October 23, 2023 and explained that failure to do so might result in the case being dismissed for failure to prosecute. (ECF No. 6.) To date, Plaintiff has not taken any action responsive to the Court's order or otherwise taken any affirmative step to prosecute this case.

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action "if the plaintiff fails to prosecute or to comply with the rules or a court order." *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). It is settled that Rule 41(b) "gives the district court authority to dismiss a plaintiff's case *sua sponte* for failure to prosecute." *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Dismissal without prejudice is appropriate here. Plaintiff was "given notice that further delay would result in dismissal," *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004), and there is prejudice where Plaintiff has caused an "unreasonable delay." *LeSane*, 239 F.3d at 210. Dismissal without prejudice appropriately

strikes a balance “between alleviating court calendar congestion and protecting a party’s right to due process and a fair chance to be heard.” *Id.* at 209.

Accordingly, this action is dismissed without prejudice to refiling.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: October 26, 2023  
New York, New York



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J. PAUL OETKEN  
United States District Judge